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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re S.A., a Person Coming Under
the Juvenile Court Law.

B270011

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

O.A.,

Defendant and Appellant.

(Los Angeles County
Super. Ct. No. DK13288)

APPEAL from an order of the Superior Court of
Los Angeles County; Annabelle Cortez, Judge. Reversed.

Joseph D. MacKenzie, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel and Stephen D. Watson, Deputy
County Counsel for Plaintiff and Respondent.

O.A. (Father) appeals from the juvenile court's order declaring minor S.A. a ward of the court. We hold that the juvenile court's findings of inappropriate physical discipline do not support jurisdiction under Welfare and Institutions Code¹ section 300, because substantial evidence does not show that the minor suffered, or is at substantial risk of suffering, serious physical harm from Father, nor that Mother (Katherine B.) failed to protect S.A.²

Accordingly, we reverse the order.

BACKGROUND

Via a referral dated August 7, 2015, the Department of Children and Family Services (Department) opened an investigation based on an allegation that Father physically abused his son, S.A., by grabbing S.A., age 17, by the neck";³ Father called the police, and officers took S.A. to a hospital for

¹ Further statutory references are to the Welfare and Institutions Code.

² The Department requests that this Court dismiss Father's appeal. It asserts that the matter is not justiciable, because the juvenile court maintains its jurisdiction over S.A. based on its findings against Mother. The Department mischaracterizes the juvenile court's findings; the juvenile court's findings against Mother are not independent of its findings regarding Father; instead, it determined that Mother failed to protect S.A. from Father. As we reverse the juvenile court's order as to Father, there was no reason for Mother "to protect" S.A. from Father.

³ S.A. stands 74.02 inches tall and weighs over 173 pounds.

“small scars on his neck.”⁴ The Department did not file a petition based on the referral.

On September 5, 2015, S.A. was a passenger in Mother’s car when they had a physical conflict. Mother called the police, complaining that she was afraid of S.A., who had kicked the gear shift so that she almost lost control of the car. S.A.’s account of the incident was that the two were bickering in the car when Mother grabbed him by the neck, and he “kicked his leg up and hit mother’s iced tea.” Police officers brought Mother and S.A. to an emergency room, where staff found no scratches or bruises on S.A. Staff performed a psychiatric evaluation of S.A. and concluded no hospital hold was necessary.

Mother refused to allow S.A. to return to her home and said that no other family member was willing to take him in. S.A. told a social worker of the Department of Children and Family Services (Department) that he did not want to go to Father’s home, because “he is tired of the abuse with his father.”⁵ The Department detained S.A. and placed him at a temporary juvenile shelter.⁶ On September 9, the juvenile court ordered mental health and developmental assessments for S.A.

The following day, on September 10, the Department filed a petition based on both the August and September incidents. The petition alleged that S.A. came within the jurisdiction of the juvenile court under section 300, subdivision (a), because, on

⁴ The record does not contain any written documentation of the referral.

⁵ Mother and Father do not reside together.

⁶ S.A. was later placed with relatives.

September 5, Mother had placed S.A. in danger by grabbing his neck.

The petition also alleged that S.A. came under the juvenile court's jurisdiction pursuant to section 300, subdivision (b), because of Father's actions and Mother's failure to protect. The petition alleged that "on numerous prior occasions," Father physically abused S.A., and, on an undated "prior occasion," Father pushed S.A. onto the floor, held him down by placing his knee on S.A.'s chest and grabbing his neck. The petition further charged that Mother knew of "physical abuse of the child by the father and failed to protect the child."⁷

The Department social worker reported that, on September 5, 2015, she had spoken with S.A. about the August 7, 2015 incident: "The minor stated that he was arguing with father and father pushed him to the floor and grabbed him by the neck. The minor stated that father had one knee on his chest to keep him down. The minor stated that police arrived and he was taken to the hospital again."

The September 10, 2015 Detention Report gave Father's account of the August 7, 2015 incident. Father explained that he had taken S.A. to a barbershop for a haircut. S.A. had a "tantrum" when Father refused to buy him a brush. S.A. left the barbershop and walked home. Father, who drove his car, arrived home first. When S.A. arrived, Father did not let him into the house. S.A. began to bang on the window. Father let S.A. into the home, but they continued to argue. Father called the police who came and counseled them. After police officers left, Father

⁷ At the conclusion of the January 26, 2015 hearing, the juvenile court amended "physical abuse" to "inappropriate physical discipline."

took away S.A.'s cell phone. S.A. "became more irate and attempted to 'sock him' and father was able to avoid . . . getting hurt. . . . Father reported that he reacted and needed to 'protect himself' and a struggle[] ensued between them, and [S.A.] lost[his] balance on the couch somehow and fell to the floor. Father reported that he then 'pinned him down' ([S.A.]) on his back. . . . Father denied 'choking' [S.A.] and admitted to grabbing [S.A.] from getting socked by him, and believes that during the 'struggle' he may have touched his neck/throat area, but not to intentionally inflict harm on his son." Father called the police, who transported S.A. to the hospital, where S.A. reported that he had difficulty breathing. Father told the social worker that S.A. had been diagnosed with costochondritis or asthma over one year before the August 2015 incident, but was not then on medication for the condition. Father also stated the hospital nurse told him that this condition did not inhibit his son's ability to breathe and that the nurse had said that S.A. "had 'no need' to have gone to the hospital for this condition."

On November 28, 2015, S.A. gave the social worker more details of the August 7, 2015 incident: He had argued with Father at a barbershop and then walked home "because I wasn't about to be in the car with him after that. When I got home I knocked on the window so they could let me in the house. No, I wasn't banging on the window. . . . That's when the police came and said that they were told that I was banging on the window. After they left I went to my room and my dad was taking stuff from my room, and he was pushing me and telling me what are you doing here leave. No, I never lunged at my dad. No, I never swung at my dad."

S.A. went on to tell the social worker: “My dad didn’t throw me on the floor. It was the couch and he called the cops again. The same cop that was there a little while earlier responded again. . . . [T]he cop kept asking me if everything was cool because I was having trouble breathing. He asked me if I needed a paramedic and I didn’t want to say yes because of the cost, but I couldn’t breathe. So that’s when the paramedics came and took me to the hospital.”

On November 28, 2015, Father told the social worker that he did not place his knee on S.A.’s chest or grab his neck: “I caught his hand and pinned him down. I never had my knee in his chest. He made a big deal trying to say that he couldn’t breathe. I had wounds on my hands from trying to restrain him. The cops were called again and the same cop responded. He asked me if I wanted to press charges and told [S.A.] that he had reason to believe that [S.A.] was the aggressor. That’s when [S.A.] was taken to the hospital because he said that he couldn’t breathe. He didn’t have any marks or bruises on him from the incident. . . . I wasn’t trying to hurt [S.A.]. I was restraining him. [S.A.] is tall but he is not a real opponent.”

When interviewed by the social worker on November 28, 2015, S.A. said: “My dad has done this before. This is not the first time.” He went on to explain: “My dad has hit me in the past. He has hit me in the chin and nose. He hit me with a towel rack when I was in elementary school. I had a scratch on my nose from that and I told my teacher and she asked my dad about it and I got in trouble with my dad when we got home for saying anything.”

The social worker reported that S.A. told her that he had complained to Mother about Father; Mother advised S.A. to

“‘take the beatings for now until your father pays for your college.’” Nonetheless, Mother told the social worker that, when S.A. comes to her home from Father’s home, she never observes any marks or bruises on him.

Father stated that S.A. had been in counseling but counseling had ended when S.A. refused to cooperate; Father had participated in “one or two” counseling sessions with S.A. in the past and would consider conjoint counseling with his son in the future.

The Multidisciplinary Assessment Team (MAT) Summary of Findings Report ⁸ confirmed that S.A. has anger issues and recommended psychotropic medication: “There is a history of sudden and explosive anger outbursts resulting in aggression toward others and property.” According to the report, S.A. exhibits “psychosomatic symptoms of depression and anxiety as he has physical complaints that medical providers have deemed to be psychological in origin, such as chest pain and shortness of breath.”

The Department social worker concluded that: “It is the Department’s assessment that the parents have made efforts to work with [S.A.] and address his needs, however the minor has been resistant to his parent[s] efforts.”

At the January 26, 2015 hearing, S.A. was the only witness who testified. When Mother’s counsel asked whether Father had injured him, S.A. responded, “Yes.” When asked whether he had told the social worker that Father “had been physically abusing” him “for years,” S.A. responded, “Yes.” When Mother’s counsel

⁸ Mother and paternal aunt are shown on the signature page as part of the Team.

then asked him about the Department's having interviewed him "about physical abuse or neglect by your father in August," S.A. replied that he remembered and confirmed that no court case was filed.

S.A.'s counsel asked whether he had told Mother that Father physically abused him; he replied, "Yes, multiple times." S.A.'s counsel asked him whether Mother told him "that you have to take the beatings for now until your father pays for college?" S.A. replied, "Yes." When his counsel asked, "Did your mother allow you to continue to reside with your father?" S.A. responded, "Yes." His counsel asked, "Did your father force you onto the floor and put his knee on your chest and grab you by the neck?" He responded, "Yes, yes."

At the conclusion of the January 26, 2015 hearing, the juvenile court amended the petition's allegation against Father from "physical abuse" to "inappropriate physical discipline."

The juvenile court dismissed allegations that Mother abused S.A, but determined that Mother failed to protect S.A. from Father's "inappropriate discipline." The juvenile court determined that S.A. came within its jurisdiction under section 300, subdivision (a) and (b): "On numerous prior occasions, [Father] used inappropriate physical discipline. On a prior occasion, the father pushed t[he] child onto the floor, held the child down with the father's knee on the child's chest and grabbed the child's neck. Such inappropriate physical discipline was excessive and caused the child unreasonable pain and suffering. The mother knew of the inappropriate physical discipline of the child by the father and failed to protect the child. The inappropriate physical discipline of the child by the father[] endangers the child's physical health and safety, and places the

child at risk of serious physical harm, damage, physical abuse and failure to protect.”⁹

Father appeals.

DISCUSSION

Father contends the facts did not provide substantial evidence that Father inflicted serious physical harm, or posed a substantial risk of inflicting serious physical harm, upon S.A. We agree.

“The purpose of section 300 is ‘to identify those children over whom the juvenile court may exercise its jurisdiction and adjudge dependents.’” (*In re A.O.* (2010) 185 Cal.App.4th 103, 110.) To declare a child a dependent under section 300, the juvenile court must find by a preponderance of the evidence that the allegations are true. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; see § 355, subd. (a).) “[T]he question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1104.) We review the court’s findings under section 300 for substantial evidence and will affirm the judgment based on those findings if they are supported by “reasonable, credible evidence of solid value.” (*Matthew S.*, at p. 1319.)

⁹ The court ordered family reunification services for both parents, including individual counseling to address case issues, parenting for teens, conjoint counseling with S.A., and monitored visitation two to three times per week, for two to three hours per visit, and gave the Department the discretion to liberalize the visits. The court also ordered a psychiatric evaluation and individual counseling with a Department-approved counselor for S.A., and conjoint counseling with his parents, contingent upon the recommendation of S.A.’s individual therapist.

The juvenile court may take jurisdiction over a minor under section 300, subdivision (a) when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child”

Section 300, subdivision (b), authorizes dependency when, as relevant, “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child” “A jurisdictional finding under section 300, subdivision (b) requires: ‘ “ (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” [Citation.] [Citations.] The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ ” (*In re James R., Jr.* (2009) 176 Cal.App.4th 129, 135.)

Substantial evidence does not support the findings under either subdivision (a) or (b) of section 300 as to Father or Mother. The record does not show that Father inflicted, or that there is a substantial risk that Father may inflict, serious physical harm on S.A. (§ 300, subd. (a)); nor that Father’s neglect has caused, or a substantial risk that his neglect would cause, S.A. serious physical harm. (§ 300, subd. (b).)

The evidence does not support the allegations that Father seriously injured S.A. on August 7, 2015 or that Father’s acts on that date established substantial risk of such injury. When police

transported S.A. to the hospital he required no medical care and, indeed, the nurse told Father that there had not been any need to come to the hospital. Nothing in the hospital records shows otherwise. (*In re D.M* (2015) 242 Cal.App.4th 634, 641; *In re Isabella F.* (2014) 226 Cal.App.4th 128, 139; *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003.)

The only other specific incident that S.A. described occurred when he was in elementary school; Father hit him with a towel rack on his nose and chin causing a scratch on his nose. First, S.A.'s own description of the incident shows that Father did not cause him serious injury. Second, S.A.'s description does not inform us whether Father hit him intentionally or accidentally. Third, it is too remote to support jurisdiction.

Lastly, S.A.'s statement that Father physically abused him for many years also does not support jurisdiction. Without a description of what Father actually did we cannot determine whether the "abuse" caused any injury, serious or otherwise. Further, Mother testified that she never saw any bruises or other injury when S.A. returned from staying with Father.

Accordingly, on this record, the juvenile court has no jurisdiction under either subdivision (a) or (b) of section 300 with respect to Father. (See *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1398; *In re Alysha S.* (1996) 51 Cal.App.4th 393, 399; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

Thus it follows that the court had no basis for finding that Mother "failed to protect" S.A. from Father. (§ 300, subds. (a) & (b).)

Accordingly, we reverse the order.

DISPOSITION

We reverse the order and remand the matter with directions that the juvenile court vacate the order and issue a new order: (1) finding S.A. is not a dependent child within its jurisdiction under Welfare and Institutions Code section 300; (2) dismissing the Welfare and Institutions Code section 300 petition as to S.A.; and (3) ordering S.A. discharged from any detention or placement theretofore ordered.

NOT TO BE PUBLISHED

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.